IN THE HIGH COURT OF JUDICATURE OF BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

NOTICE OF MOTION NO.2753 OF 2007
IN
SUIT NO.2105 OF 2007

Raja Constructions Co. ..Plaintiff.

V/s.

Sahara Co-op.Hsg. Ltd. & Ors. ..Defendants.

Mr. D.H.Mehta a/w Ms.Vandana Mahadik for Plaintiff.

Ms.Neeta M. i/b. M/s. S.M.Associates for Defenddant No.1.

Mr.Holambe Patil for Defendant Nos. 2 and 3.

Mr.R.L.Shetia for Defendant No.4.

CORAM: A.M.KHANWILKAR,J

DATE : AUGUST 31, 2007.

P.C. :

1. Heard counsel for the parties. Perused the relevant pleadings.

2. According to the Plaintiff, having regard to the fact situation of the present case, it is imminently a fit case for appointment of Court Receiver, so as to secure the interest of the overwhelming number of members of the Defendant No.1 Society, who are in favour of the development of the suit building, to be undertaken by the Plaintiff on the terms and conditions already finalised and

recorded in the agreement dated 1st September, 2006, which was based on the resolution passed by the General Body of the Defendant No.1 Society on 11th June, 2006. It is contended that it is essential to pass such order as the building in question is in a dilapidated position and portion of the building on the second floor has already collapsed in April, 2007. The defendant No.1 Society is in complete agreement with the argument and relief prayed by the Plaintiff and has no objection to grant the same.

3. The Defendant No.4, who was originally obstructing the work of development to be undertaken by the Plaintiff, has now made it clear that she has no objection to the development of the property through the Plaintiff in terms of the agreement dated 1st September, 2006, provided the interest of the Defendant No.4 is secured, as is noted in paragraph-7 of the reply affidavit filed by the Defendant No.1. In response, the Defendant No.1 Society through counsel assures that as and when the premises would become available for allocation in the newly constructed building, the Defendant No.4 will be allotted suitable premises in lieu of the present Unit, but on clear understanding that she would remain in possession of such premises only as nominee

of the original member; until all contentious issues between the family members of the original member are resolved in appropriate proceedings, to be taken out by them. The assurance given by Defendant No.1 is accepted.

4. The main objection is on behalf of the Defendant Nos. 2 and 3. According to them, this Court has no jurisdiction to try and decide the Suit, as presented. It is argued that the substantive relief in the plaint is for injunction or mandatory injunction, which can be granted by the City Civil Court. For that reason, this Court has no jurisdiction to entertain the present suit. This argument clearly overlooks the frame of the Suit and more importantly the other reliefs including the relief (b), as claimed by the Plaintiff. The relief (b) as claimed, by no stretch of imagination can be taken before the City Civil Court. Instead of requiring the parties to resort to multiplicity of proceedings, the Plaintiff can be permitted to pursue their claim before one court, as presented before this Court. It is not a case of want of jurisdiction of this Court, but it is an argument only of pecuniary jurisdiction. For the aforesaid reason, this objection of the Defendant Nos. 2 and 3 is

devoid of merit.

5. The next argument of the Defendant Nos. 2 and 3 was that there is nothing on record to indicate that the Plaintiff has taken over possession of the entire property or even portion thereof. If it is so, the Plaintiff will not be entitled for any relief having regard to section 14(3)(c)(iii) of the Specific Reliefs Act. Even this argument does not commend to me. It is relevant to note that the Defendant No.1-society has taken a conscious decision by passing resolution in the General Body Meeting held on 11th June, 2006 to develop the suit property and to assign the development work to the Plaintiff. The resolution so passed on 11th June, 2006 has been acted upon by execution of a formal agreement with the Plaintiff, on 1st September, 2006. Moreover, the Defendant No.1-society assures before this Court that possession of the suit property, except the premises in occupation of the Defendant Nos. 2 and 3 can be immediately handed over to the Plaintiff. However, as the Defendant Nos. 2 and 3 have been causing obstructions and delaying the process of vacating their units, the members are apprehensive of the time frame that may be required for the redevelopment and completion of the entire work. For that reason, they

have still not vacated their premises but are willing to do so immediately to effectuate the agreement already executed on 1st September, 2006. Suffice it to observe that the provision pressed into service on behalf of the Defendant Nos. 2 and 3 is of no avail to resist the relief claimed in the suit or for that matter the present Motion.

6. So far as the merits of the case is concerned, fulcrum of the argument of the Defendant Nos. 2 and 3 was that the agreement executed in favour of the Plaintiff is without following due process of law. The grievance is that in one General Body Meeting held on 11th June, 2006, all actions have been finalised, namely, invitation of tender from the Plaintiff and acceptance thereof including resolution passed to appoint the Plaintiff as developers. The argument clearly overlooks that the General Body resolution was passed in the meeting held on 11th June, 2006, attended by nine members out of twelve members of the society, unanimously. In other words, the overwhelming members are committed not only to development of the property, which is imperative having regard to the dilapidated condition of the building, but also in favour of assigning the work of redevelopment to the Plaintiff only. It is

on that basis, agreement has been executed in favour of the Plaintiff on 1st September, 2006. Consequent to that agreement, the Plaintiff has taken all necessary steps for obtaining permission of Municipal authorities. It is a matter of record that the Corporation has already issued IOD in respect of the building to be redeveloped as back as in March, 2007 but the work could not be proceeded further because of the recalcitrant attitude of the defendant No.2 and 3. It is also matter of record that due to delay in work, portion of the building has collapsed in April, 2007.

7. Significantly, the resolution passed by the General Body as back as on 11th June, 2006 has been allowed to operate and to be acted upon without any challenge from the three members who did not attend the General Body Meeting. As has been mentioned earlier, although the Defendant No.4 was not present in the General Body Meeting has now through counsel supported the cause of the Defendant No.1-society and agrees to abide by the resolution of the General Body Meeting. Thus understood, it is only the Defendant Nos. 2 and 3, who are in miniscule minority, are resisting the development work of the project by resorting to frivolous and untenable pleas, such as

taken before this Court, without challenging the validity of the resolution already passed by the General Body as back as on 11th June, 2006, which is binding on them. It is not only that resolution but also the actions taken by the Defendant No.1 on the basis of such resolution will bind the Defendant Nos. 2 and 3 who are members thereof. Even the steps taken by the Defendant No.1 Society acting upon the General Body resolution which is supreme, have not been challenged before any court of law. The Defendant No.1 Society is obviously a Tenant Co-partnership Housing Society. The interest of the Defendant Nos.2 and 3 in the premises occupied by them is limited. It is seen that the agreement between the Society and Plaintiff fully secures that interest of the Defendant Nos. 2 and 3. They have been assured of allocation of premises in the newly constructed building in lieu of their present premises.

8. Be that as it may, taking overall view of the matter, I have no hesitation in holding that this is an imminently fit case and it will be just and expedient to accede to the request of the Plaintiff for appointment of Court Receiver, which is supported by the overwhelming majority of members (now ten out

of twelve) of Defendant No.1-including Defendant No.4. The Court Receiver will have to take over possession of the entire property and require the occupants to vacate the same by giving reasonable time to vacate and then make it over to the Plaintiff for redevelopment. Redevelopment of the property will be under supervision of the Court Receiver. If the Court Receiver finds that any occupant is taking unreasonable attitude and not vacating the suit premises peacefully, will be free to dispossess the said occupant by employing police force, if necessary. The Court Receiver before resorting to that action however, shall give atleast two weeks prior notice to the concerned occupant. The Court Receiver will be free to take assistance of the local police, who are directed to provide requisite number of police officials on the site, as may be required for carrying out the Orders of this Court.

9. Accordingly, the relief in terms of prayer clause (a), (b) and (c) except the bracketed portion of the prayer clause (b) to exclude Flat No.10 are granted with direction to the Court Receiver, as mentioned in the earlier part of this decision to carry out the same and report compliance.

(A.M.KHANWILKAR,J)